

**Performance Audit
Firefighter Time Trading**

January 2005

**City Auditor's Office
City of Kansas City, Missouri**

January 18, 2005

Honorable Mayor and Members of the City Council:

We conducted this audit of firefighter time trading because Human Resources staff voiced concerns about the appropriateness of allowing time trading to cover the work schedule of an injured firefighter approved for family and medical leave. Human Resources staff was disturbed that the firefighter would not be able to trade time back for months and was accruing sick leave and receiving sick leave donations that were not being drawn down because the firefighter's shifts were covered through time trading. The staff also questioned the payment of overtime and work out of class pay for the scheduled employee.

Time trading is a common practice in fire departments. The Fair Labor Standards Act and federal regulations provide guidance on how time trading or shift trading should be administered. The Memorandum of Understanding between the city and Firefighters Local 42 and the Fire Department's General Administrative Guidelines also provide direction.

Neither federal law nor city policies address whether time trading can be used by an employee approved for family and medical leave. The Fire and Human Resources departments interpreted the policy silence differently. Directions given by the Human Resources staff and changes adopted by the Fire Department have resulted in outcomes that appear to be inconsistent with legal requirements. We recommend that the City Manager clarify the city's policy on time trading during family and medical leave and that the Fire Chief correct problems the department created inadvertently.

The City Manager and the Fire Chief received a draft of this report on December 6, 2004. Their responses are appended. We appreciate the courtesy and cooperation of the Fire Department staff during the audit. The team for this audit was Sharon Kingsbury and Nancy Hunt.

Mark Funkhouser
City Auditor

Performance Audit: Firefighter Time Trading

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Introduction

Objectives

We conducted this performance audit of firefighter time trading pursuant to Article II, Section 13 of the city charter, which establishes the Office of the City Auditor and describes the City Auditor's primary duties.

A performance audit systematically examines evidence to independently assess the performance and management of a program against objective criteria. Performance audits provide information to improve program operations and facilitate decision-making.¹ We designed this audit to answer the following question:

- Does the city's firefighter time trading practice comply with state and federal laws and regulations?

Scope and Methodology

This audit focuses on firefighter time trading. The audit was conducted in accordance with generally accepted government auditing standards. Methods included:

- Reviewing selected provisions of the Fair Labor Standards Act and related federal regulations, the Family and Medical Leave Act, the Memorandum of Understanding between the city and Local 42, the city's Family and Medical Leave Policy, and the Fire Department's policies related to time trading.
- Interviewing fire staff for the city and other jurisdictions, and officials for Firefighters Local 42.
- Obtaining opinions from the city's Law Department.

No information was omitted from this report because it was deemed privileged or confidential.

¹ Comptroller General of the United States, *Government Auditing Standards* (Washington, DC: U.S. Government Printing Office, 2003), p. 21.

Background

Time trading is a common practice for public safety employees but an unusual practice for most other public employees. Incidents involving the abuse of time trading have occurred periodically in the Fire Department and been reported in the press. Some of the provisions in the Fire Department's Guideline on Trading Time address past problems.

During our audit of sick leave,² the Human Resources Department questioned the use of time trading to cover the work schedule of an injured firefighter approved for family and medical leave. Human Resources staff did not believe that it was appropriate for an employee approved for family and medical leave to cover his shifts through time trading. Human Resources Department staff was concerned that the firefighter would not be able to trade time back for months and was accruing sick leave and receiving sick leave donations that were not being drawn down because the firefighter's shifts were covered through time trading. The staff also questioned the payment of overtime and work out of class pay for the scheduled employee. We undertook this audit to address the department's concerns.

Time Trading

Time trading is the substitution of one employee to work hours scheduled for another of the same rank or position. Blocks of time traded can be a partial or a full shift.

Fair Labor Standards Act

The Fair Labor Standards Act (FLSA) permits an employee of a public agency, with that agency's approval, to substitute during the scheduled work hours of another individual who is employed by the same agency in the same capacity. The employee's decision to substitute must be freely made, without fear of reprisal or promise of reward by the employer, and is exclusively for the scheduled employee's convenience. Even though a substitution has occurred, each employee will be considered to have worked his or her normal schedule. The traded time will not be considered in calculating hours for overtime for the substituting employee. The arrangement for trading time and payback is left to the two employees involved. The employer must be aware and approve of the substitution beforehand; however, the employer is not required to keep a record of the hours of substituted work.

² *Citywide Use of Sick Leave*, Office of the City Auditor, Kansas City, Missouri, April 2004.

Memorandums of Understanding

Time trading provisions have been included in Memorandums of Understanding (MOU) between the city and the firefighters' union (Local 42) since 1970. The current MOU states that Battalion Chiefs must be notified of time trades at least 30 minutes prior to a trade. If a firefighter trades more than five times in a calendar year, permission of the Battalion Chief or the designative representative is required. A request for time trading, however, may not be unreasonably denied.

Fire Department Guideline on Trading Time

The Fire Department's general administrative guideline on trading time requires that time trading occur between employees with equal qualifications, capable of performing all duties.³ A Battalion Chief or division head must approve time trading that is not rank-for-rank. The guideline also requires documentation of all time trades.

The department's guideline states that trades beyond the five allowed per year under the MOU will be permitted if the requests are to:

- execute the duties of an elected or appointed office in the labor union;
- pursue professional development activities reasonably related to fire service, including liberal arts education;
- accommodate personal business; however, this does not include trades to perform outside employment.

Any request outside the foregoing must be approved in writing by the Fire Chief or designated representative.

Family and Medical Leave Act

The Family and Medical Leave Act (FMLA) requires certain employers, including the City of Kansas City Missouri, to provide up to 12 work weeks of job-protected unpaid leave a year to eligible employees for certain family and medical reasons.⁴ The FMLA also provides for maintenance of health benefits during leave and job restoration after leave, and protects employees who request or take family and medical

³ General Administrative Guideline: 1-2, Trading Time, Fire Department, Kansas City, Missouri, August 1, 1999.

⁴ Eligible employees must have worked for a covered employer for at least 12 months and for 1,250 hours over the previous 12 months. Leave may be taken for the birth of a child, placement of child through adoption or foster care, care for immediate family member with a serious health condition, and when the employee is unable to work because of a serious health condition.

leave. The FMLA is intended to allow employees to balance work and family life, while accommodating the legitimate interests of employers.

City's Family and Medical Leave Policy

Under the city's policy, family and medical leave can be both paid and unpaid leave. The city's policy requires that an employee exhaust sick leave, vacation, and free day before family and medical leave is unpaid. The employee chooses the order in which paid leave is used.

Findings and Recommendations

Summary

Time trading in fire departments is an accepted, common practice. According to the city's Fire Department management and union officials, time trading benefits both the city and employees.

The city's policies do not address whether time trading can be used by an employee approved for family and medical leave. The Fire and Human Resources departments interpreted the policy silence differently. Directions given by the Human Resources staff and changes adopted by the Fire Department have resulted in outcomes that appear to be inconsistent with legal requirements. The City Manager should clarify the city's policy and the Fire Department should take steps to correct problems identified.

Time Trading Is an Established Practice for Fire Departments

We contacted five area fire departments about time trading and found that all of these departments permitted the practice. Although the standards for managing time trading differed, fire department managers we interviewed believed that time trading benefited their departments and individual firefighters.

The city's Fire Department managers and union officials reported that time trading is a practical and beneficial tool. Battalion Chiefs think that time trading helps with scheduling and maintaining minimum staffing levels and gives firefighters a flexible method of attending to personal business.

Battalion Chiefs and union representatives believe that time trading improves morale and allows flexibility for a workforce that works 24-hour shifts. Firefighters' vacation time is scheduled early in the fiscal year, based on seniority. Minimum staffing requirements and employee preferences for vacations on holidays, on weekends, and during warmer weather do not allow all employees to schedule vacations at times they would prefer. Time trading permits employees to attend to important personal events and family matters throughout the year. Firefighters have used time trading to attend college classes and other training.

Administration of Time Trading Should Be Updated

The city's policies do not address whether time trading can be used by an employee approved for family and medical leave. The Fire and Human Resources departments interpreted the policy silence differently. Directions given by the Human Resources staff and changes adopted by the Fire Department have resulted in outcomes that appear to be inconsistent with legal requirements.

City Policy Is Silent on Time Trading Under FML

Neither the MOU nor other city policies specifically address whether an employee can use time trading for family and medical leave. The city's Family and Medical Leave Policy specifies that an employee must use accrued sick leave, vacation leave, and free day for family and medical leave before unpaid leave is allowed. Time trading is not mentioned. The city's Family and Medical Leave Policy, however, does allow both paid and unpaid leave to be used.

Fire and Human Resources staffs view time trading differently.

Battalion Chiefs reported that firefighters with long-term illness or injury used time trading to prevent the loss of sick leave and vacation time. We were told that in these instances, substituting firefighters understand that time may not be repaid or traded back. Firefighters cover shifts and donate leave time to injured members, expecting that if the need arises, others will do the same for them.

Human Resources staff told Fire Department staff to stop approving time trades for firefighters approved for family and medical leave. Human Resources staff believed that it was inappropriate to permit time trades when the employee benefiting from the trade would be unable to trade back for some time.

The City Manager should formally establish the city's position on firefighters' use of time trading while on family and medical leave.

Pay Should Go to the Scheduled Employee Under FLSA

Human Resources Department staff told Fire Department staff that it was inappropriate to pay overtime and work out of class pay to an employee who was on family and medical leave and whose shift was covered through time trading. The Fire Chief responded by directing staff to stop paying overtime pay to scheduled employees who have their shifts covered by a substitute.

Currently, when a substituting firefighter works more than 24 hours, the substituting firefighter is paid overtime. This would appear contrary to the Code of Federal Regulations' interpretations of section 7(p)(3) of the FLSA, which advises that "where one employee substitutes for another, each employee will be credited as if he or she had worked his or her normal work schedule for that shift."⁵ By trading time, all compensation derived from the substitute's coverage of a scheduled employee's shift belongs to the scheduled employee. The Fire Chief should ensure that the scheduled firefighter, not the substituting firefighter, is paid overtime and work out of class pay, when appropriate.

Regulations Require Employer Awareness and Approval

The Code of Federal Regulations⁶ also requires that the employer be aware of time trades and indicate approval in a customary manner. Under General Administrative Guideline 2-1, the firefighter requesting a time trade must complete form 3100-1043—"Request for Trading of Time." The guideline requires that both employees involved in the trade sign the form; that the Battalion chief or division head sign the form when an employee has more than five trades in a year; and that copies of the form be maintained in a battalion file and at headquarters.

The Fire Chief rescinded the documentation requirement but did not incorporate the change in the department's guideline. As a result, battalion chiefs use various methods of recording and tracking time trading. Some Battalion Chiefs continue to maintain Form 3100-1043 as required by the General Administrative Guideline, some make hand written notes on time trades and discard the notes at the end of the shift, and some mark their payroll line-up sheets indicating their knowledge and approval of time trades. With the elimination of the General Administrative Guideline documentation requirement and the Battalion Chiefs' varied methods of tracking time trades, it is not clear how the Battalion Chiefs would customarily indicate approval of the time trade as required under the federal regulations.

Trades should not be in the payroll system. The Law Department advised the Fire Department not to incorporate time trading records in the new payroll system. Incorporating the recording of time trading in the payroll system is not required by the Fair Labor Standards Act and could open the city to liability. Currently the city avoids involving itself in disputes between employees regarding the time they have traded among themselves. Were the city to track time trades through payroll records, it could create the expectation—and a mechanism—that employees could rely upon the city to settle disputes.

⁵ 29 CFR 553.31 (a).

⁶ 29 CFR 553.31 (d).

In order to protect the city's interests and ensure compliance with the federal requirements for time trading, the Fire Chief should discuss with the Law Department how to fulfill the FLSA regulations regarding awareness and approval of time trading and update the General Administrative Guideline 1-2 to reflect procedures that will be followed.

State and city records disposal requirements should be met.

Documentation created pursuant to an administrative rule, including supporting materials sufficient to explain a document trail for administrative purposes is an official record. A note made by a Battalion Chief to track a time trade during a shift is an official record under Missouri law and should not be discarded at the end of the shift, but retained and disposed of in accordance with state law. In addition, City Code section 2-779 requires that the Records Control Committee must approve disposal of city records. The Fire Chief should ensure that department staff dispose of records in accordance with state and city laws and regulations.

Recommendations

1. The City Manager should formally establish the city's position on firefighters' use of time trading while on family and medical leave.
2. The Fire Chief should ensure that the scheduled firefighter, not the substituting firefighter, is paid overtime and work out of class pay, when appropriate.
3. The Fire Chief should discuss with the Law Department how to fulfill the time trading awareness and approval requirements of the FLSA regulations and update the General Administrative Guideline 1-2 to reflect the procedures that will be followed.
4. The Fire Chief should ensure that department staff dispose of records in accordance with state and city laws and regulations.

Appendix A

City Manager's Response



Office of the City Manager

DATE: January 12, 2005

TO: Mark A. Funkhouser, Ph.D.

FROM: Wayne A. Cauthen, City Manager ^{W.A.C.}

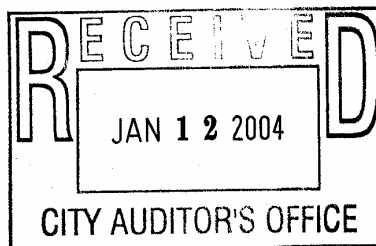
SUBJECT: Draft Audit Firefighter Time Trading

In your draft performance audit on the subject of Firefighter Time Trading, it is recommended that:

“The City Manager should formally establish the city’s position on firefighters use of time trading while on Family Medical Leave.”

I concur that a single, uniform policy regarding the use of time trading by firefighters on Family Medical Leave is desirable, and this office will work collaboratively with the Fire, Human Resources, and Law Departments to development such a uniform policy within the next 90 days.

cc: Galen Beaufort
Smokey Dyer
Gary O'Bannon
Rich Noll



Appendix B

Fire Chief's Response

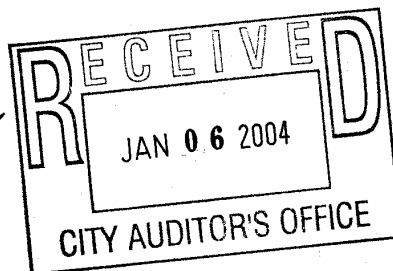
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DATE: January 6, 2005

TO: Mark A. Funkhouser, Ph.D.
City Auditor

FROM: Richard A. Dyer
Fire Chief/Director

SUBJECT: Draft Audit
Firefighter Time Trading



The Fire Department appreciates the opportunity to review and comment on this draft audit report respecting the practice of time trading in the represented ranks of the Fire Department. As the report notes, this is a well established and widely accepted practice throughout the industry. The practice evolved to balance the interest of the public and employer in ensuring that these critical positions remain reliably filled with competent employees and the firefighters' interest in allowing a mechanism to provide reasonable flexibility in accommodation of a range of personal needs and obligations that are amplified by a schedule quite different from that of most other public employees. The recognition of these factors reflected in the report is also appreciated.

We also appreciate that practices which deviate from the usual norms for other public service employees are subject to misunderstanding and hence reasonably attract additional measures of vigilance and scrutiny. The Department, through its Labor/Management Partnership, has attempted to address such questions as they have arisen. The solutions we have proposed have not always been able to fully satisfy all competing interests. This report helps to clarify the matters requiring further address and the Fire Department remains committed to resolutions that satisfy to the fullest extent possible the needs of the City, its citizens, and our employees who serve and protect them in accordance with applicable statutes and regulations.

Following the recommendations of the report, the Department will propose limitation of time trades strictly to the 24 hour shift or appropriate segment thereof and will work within the Labor Management Partnership to develop policies to ensure that out of class assignment and holdover time are handled in accordance with FLSA provisions. We will also work with the Law Department and within the Labor Management Partnership to

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RE: Draft Firefighter Time Trading Audit

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properly manage awareness and approval requirements, and to ensure that records created in such exchanges are maintained and disposed of in accordance with statutes, ordinances, and regulations. Any alterations will be memorialized in the General Administrative Guidelines and reported through the ARTS process. The matter of clarification regarding the City's FMLA policy with respect to time trade potentially impacts elements of the City's Memoranda of Understanding with Locals 42 and 3808 of the International Association of Fire Fighters and should be determined with due recognition of those constraints.

The Fire Department again expresses its appreciation of the impartial and objective treatment the City Auditor and his staff have worked to give this matter.